

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL



R.121-12
Interbasin Transfer of Water
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**S.C. Department of Health and Environmental Control
Environmental Quality Control
Bureau of Water**

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INTERBASIN TRANSFER OF WATER

(Statutory Authority: 1976 Code Sections 49-21-10 et seq.)

121-12.1. Purpose. [SC ADC 121-12.1]

The purpose of this regulation is to protect the supply of water within designated river basins through the establishment of procedures to register, permit, and otherwise regulate the interbasin transfer of water.

121-12.2. Definitions. [SC ADC 121-12.2]

A. "Commission" means the South Carolina Water Resources Commission.

B. "Basin of origin" means the river basin where the point of withdrawal for a transfer is located.

C. "Losing river basin" means a river basin which sustains a decrease in water as the result of a diversion or transfer of water to a different river basin and there is no significant return of the water to the river basin of origin.

D. "Permit" means an Interbasin Water Transfer Permit,

E. "Person" means any or all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, federal or state governmental agencies, or private or public corporations organized under the laws of this state or any other state or country.

F. "Receiving river basin" means a river basin which is the recipient of an increase in water, over and above that occurring naturally, as the result of a diversion or transfer of water from a different river basin.

G. "Registration" means the registration of transfers in existence as of December 1, 1984, which otherwise meet the requirements of R.121-12.12.

H. "River basin" means the area drained by a river and its tributaries or through a specified point on a river, as specified in R.121-12.3.

I. "Seven day, ten year low flow" means the lowest average flow for a duration of seven days with a recurrence interval of ten years and which is determined for the original point of withdrawal from a surface water source, or for a withdrawal from a surface water impoundment, the most immediate downstream point below the impoundment.

J. "Surface water" means any water located on the land surface which is not derived by pumping from groundwater.

K. "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and the use or discharge of all or any part of the water in a basin different from the basin of origin.

L. "Transfer facility" means any natural or man-made structure used to effect a direct transfer including, but not limited to, pumps, pipelines, canals, storage units, water treatment units and wastewater treatment units.

121-12.3. River Basin Designation. [SC ADC 121-12.3]

A. Fifteen river basins shall be used for the designation of a transfer. These basins include:

(1) The Upper Savannah River Basin drains the area from the headwaters of the Savannah River at the border with North Carolina and Georgia to the confluence of the Savannah River with Stevens Creek and encompasses McCormick and Oconee Counties and portions of Abbeville, Aiken, Anderson, Edgefield, Greenwood, Pickens and Saluda Counties;

(2) The Lower Savannah River Basin drains the area from the confluence of the Savannah River and Stevens Creek to the mouth of the Savannah River at the Atlantic Ocean and encompasses portions of Aiken, Allendale, Barnwell, Edgefield, Hampton and Jasper Counties;

(3) The Saluda River Basin drains the area from the headwaters of the North and South Saluda Rivers at the border with North Carolina to the confluence of the Saluda River with the Broad River and encompasses portions of Abbeville, Aiken, Anderson, Edgefield, Greenville, Greenwood, Laurens, Lexington, Newberry, Pickens, Richland and Saluda Counties;

(4) The Broad River Basin drains the area from the headwaters of the Tyger River in Greenville County, the Enoree and Pacolet Rivers in Spartanburg and Greenville Counties and the Broad River at the border with North Carolina to the confluence of the Broad River with the Saluda River and encompasses Cherokee, Spartanburg and Union Counties and portions of Chester, Fairfield, Greenville, Laurens, Lexington, Newberry, Richland and York Counties;

(5) The Congaree River Basin drains the area from the confluence of the Broad and Saluda Rivers to the confluence of the Congaree River with the Wateree River and encompasses portions of Calhoun, Lexington and Richland Counties;

(6) The Catawba-Wateree River Basin drains the area from Lake Wylie at the North Carolina border to the confluence of the Wateree River with the Congaree River and encompasses portions of Chester, Fairfield, Kershaw, Lancaster, Lee, Richland, Sumter and York Counties;

- (7) The Lynches River Basin drains the area from the Lynches River at the North Carolina border to the confluence of the Lynches River with the Pee Dee River and encompasses portions of Chesterfield, Darlington, Florence, Kershaw, Lancaster, Lee, Sumter and Williamsburg Counties;
- (8) The Pee Dee River Basin drains the area from the Pee Dee River at the North Carolina border to the confluence of the Pee Dee River with the Waccamaw River at Winyah Bay and encompasses portions of Chesterfield, Darlington, Dillon, Florence, Georgetown, Horry, Marion, Marlboro and Williamsburg Counties;
- (9) The Little Pee Dee River Basin drains the area from the Little Pee Dee River and Lumber River at the North Carolina border to the confluence of the Little Pee Dee River with the Pee Dee River and encompasses portions of Dillon, Horry, Marion and Marlboro Counties;
- (10) The Black River Basin drains the area from the headwaters of the Black River in Kershaw County to the confluence of the Black River with the Pee Dee River and encompasses portions of Clarendon, Florence, Georgetown, Kershaw, Lee, Sumter and Williamsburg Counties;
- (11) The Waccamaw River Basin drains the area from the Waccamaw River at the North Carolina border to the mouth of Winyah Bay at the Atlantic Ocean, the area drained by Bull Creek, the area drained by the Sampit River as well as the coastal areas north to Little River Inlet and the North Carolina border and south to South Island and encompasses portions of Georgetown, Horry and Williamsburg Counties;
- (12) The Lower Santee River Basin drains the area from the confluence of the Congaree and Wateree Rivers to the mouth of the Santee River at the Atlantic Ocean and encompasses portions of Berkeley, Calhoun, Charleston, Clarendon, Georgetown, Orangeburg, Sumter and Williamsburg Counties;
- (13) The Edisto River Basin drains the area from the headwaters of the North Fork and South Fork Edisto Rivers in Edgefield, Lexington and Saluda Counties to the mouth of the Edisto River at St. Helena Sound and the Atlantic Ocean and encompasses portions of Aiken, Bamberg, Barnwell, Berkeley, Calhoun, Charleston, Colleton, Dorchester, Edgefield, Lexington, Orangeburg and Saluda Counties;
- (14) The Ashley-Cooper River Basin drains the area from the headwaters of Cypress Swamp and Wadboo Swamp in Berkeley County and the Diversion Canal between Lakes Moultrie and Marion to the mouths of the Ashley and Cooper Rivers at Charleston Harbor and the Atlantic Ocean as well as the coastal areas north to Murphy Island and south to Seabrook Island and encompasses portions of Berkeley, Charleston and Dorchester Counties;
- (15) The Combahee-Coosawhatchie River Basin drains the area from the headwaters of the Salkehatchie River in Barnwell County to the confluence of the Combahee River with

St. Helena Sound and the Atlantic Ocean and the headwaters of the Coosawhatchie River in Allendale County to the confluence of the Broad River with Port Royal Sound and the Atlantic Ocean as well as the coastal areas south to the Georgia border and encompasses Beaufort County and portions of Aiken, Allendale, Bamberg, Barnwell, Colleton, Hampton and Jasper Counties.

B. River basins designated in A above are generally identified in figures one through fifteen.

C. The maps of river basins in B above are approximate. Any person proposing to making a transfer is responsible for contacting the Commission to determine if the proposed transfer is between any of the river basins designated in A above. The Commission will consult with any person requesting determination and provide such determination as expeditiously as practicable.

121-12.4. Permit Required. [SC ADC 121-12.4]

A. No person shall cause the transfer of either five percent or more of the seven day, ten year low flow, or one million gallons of water a day on any day, whichever is less, from one river basin and use or discharge all or any part of the water in a different river basin without first obtaining a permit from the Commission. See R.121-12.12 for provisions applicable to certain transfers in effect, under construction, or under contract on December 1, 1984.

B. Any proposed transfer equal to or greater than one million gallons of water a day, on any day, shall require a Class I Permit from the Commission. Any proposed transfer less than one million gallons of water a day, on any day, shall require a Class II Permit from the Commission.

C. The Commission may, in its discretion at any stage of permit application review, require a Class I permit from a transfer of less than one million gallons of water a day, on any day, upon a determination based on information in the possession of the Commission, that the probable impacts of the proposed transfer justify more extensive review in order to protect and safeguard all interests.

121-12.5. Notification and Preliminary Assessment (Optional). [SC ADC 121-12.5]

A. Any person proposing a transfer may notify the Commission in writing and request a preliminary assessment. Notification should include the following information:

- (1) The name and address of the person proposing the transfer;
- (2) The location of all collection, withdrawal, transportation, distribution, treatment and discharge facilities proposed to effect the transfer and boundaries of service areas; United States Geological Survey 7.5 minute or 1:250,000 scale topographic quadrangle maps shall be used to specify these locations; all map entries shall be neat and lettered in black ink; other prepared maps may be submitted if approved by the Commission;
- (3) The amount of the proposed transfer including projected daily, monthly and seasonal mean and peak use;

- (4) The proposed general use of the water;
- (5) An estimate of the overall consumptive use of the proposed transfer;
- (6) Planning status and estimated timetable for completion.

B. Following receipt of written notification, the Commission shall determine if the proposed transfer constitutes an interbasin transfer. Upon a positive finding, the Commission shall conduct a preliminary assessment on the general feasibility of the proposed transfer. The Commission may use streamflow, water use, instream studies and other appropriate information in conducting the assessment. Other State agencies may be provided an opportunity to comment on the feasibility of the proposed transfer. The preliminary assessment shall be concluded within thirty days following receipt of written notification by the Commission.

C. At the conclusion of the preliminary assessment, the Commission shall provide written notification of the findings of the assessment to the person proposing the transfer. The Commission may find that the proposed transfer appears to be:

- (1) feasible;
- (2) feasible with modifications;
- (3) not feasible;
- (4) unreviewable due to insufficient information.

D. The Commission shall not receive an application for a proposed transfer under R.121-12.6 from any person while a preliminary assessment is in progress for the proposed transfer.

E. Information considered by the Commission during a preliminary assessment may be considered by the Commission during review of an application under R.121-12.6; however, the findings in a preliminary assessment shall not be binding on the Commission in its consideration of an application under R.121-12.6, R.121-12.8 and R.121-12.9.

121-12.6. Permit Application. [SC ADC 121-12.6]

Any person required to obtain either a Class I or Class II permit for an interbasin water transfer under R.121-12.4 shall submit an application for such permit on forms furnished, upon request, by the Commission. The application shall require an applicant to provide the Commission the following information:

A. For any existing use of water by the applicant:

- (1) A listing of each use or purchase greater than one hundred thousand gallons per day, on any day;

- (2) The amount or percent of consumption for each use or purchase in A(1) above;
- (3) A listing of conservation programs or practices currently utilized for each use or purchase in A(1) above;
- (4) The peak capacity of each major component utilized in the present transfer facility for each use or purchase in A(1) above.

B. For any proposed transfer:

- (1) A listing of the projected uses or purchases greater than one hundred thousand gallons per day, on any day;
- (2) The estimated amount or percent of consumption for each use or purchase in B(1) above;
- (3) A listing of conservation programs or practices proposed for each use or purchase in B(1) above;
- (4) The peak capacity of each major component in the proposed transfer facility for each use or purchase in B(1) above;
- (5) Engineering and economic justification for the capacity of each major component of the proposed transfer facility; and
- (6) An engineering and economic assessment of the feasibility of utilizing alternate water sources.

C. Any other appropriate information deemed necessary by the Commission for review of the proposed transfer.

121-12.7. Application Notice and Comment. [SC ADC 121-12.7]

A. Within thirty working days following the submission of a completed Class I or Class II permit application, the Commission shall:

- (1) Publish a notice of the permit application once a week for four consecutive weeks in a newspaper of general circulation in each river basin area to be affected by the transfer;
- (2) Publish notice of the permit application in the State Register;
- (3) Provide notice of the application to each person holding a transfer permit or registration under these regulations within the proposed basin of origin by registered or certified mail, return receipt requested;

(4) Provide a notice of the application to other persons requesting information on the permit application.

B. Within thirty working days following the submission of a completed Class I permit application, the Commission shall:

(1) Mail a notice of the permit application to persons within the proposed basin of origin who both:

(a) Actively report under the South Carolina Water Use Reporting and Coordination Act, and

(b) Are located downstream within the proposed basin of origin of the proposed withdrawal diversion or transfer point.

(2) Mail a notice of the permit application to National Pollutant Discharge Elimination System permit holders under the Federal Water Pollution Control Act, as amended, in the basin of origin and the receiving river basin;

C. The Commission will forward a copy of any permit application to any State agency upon request. Any State agency choosing to submit comments on a permit application must submit comments within sixty days for a Class I Permit and thirty days for a Class II Permit following publication of the notice of an application in the State Register.

D. Any person who may be adversely affected by a water transfer may submit a statement to the Commission briefly outlining why the person believes he may be adversely affected. Upon receipt of such a statement, indicating potential adverse effect to the individual person specifically, as opposed to the public in general, the Commission will mail the person a copy of the permit application. Any person receiving a copy of an application under this paragraph may submit comments to the Commission within sixty days for a Class I Permit and thirty days for a Class II Permit following receipt of the application; provided, however, any comments under this paragraph must be submitted to the Commission within one hundred twenty days for a Class I Permit and forty-five days for a Class II Permit following publication of the applicable notice in the State Register or the last publication in a newspaper of general circulation in A(1).

E. Any member of the public may submit comments to the Commission on any application; provided, however, any comments under this paragraph must be submitted to the Commission within one hundred twenty days for a Class I Permit and forty-five days for a Class II Permit following publication of the applicable notice in the State Register or the last publication in a newspaper of general circulation in A(1) above.

121-12.8. Water Quality Certification. [SC ADC 121-12.8]

A. Following submission of an application for a transfer permit under R.121-12.6 and initial publication of notice under R.121-12.7 A(1), the Commission shall refer the application to the South Carolina Department of Health and Environmental Control (DHEC). The Commission

shall not issue a transfer permit except upon a certification by DHEC nor deny a transfer permit on the basis of water quality if certification has been given by DHEC. The certification by DHEC shall certify that the proposed interbasin transfer of water:

- (1) Shall not violate the water classification standard system regulation or the stream classification regulation;
- (2) Shall not adversely affect the public health and welfare.

The purpose of the certification review by DHEC is to insure the protection of the water quality and health of the losing river basin and to insure the protection of the present and permitted assimilative needs of the losing river basin.

B. The Commission shall coordinate with DHEC on the water quality aspects of the permit. In order to facilitate coordination during permit application review, the Commission shall transmit comments and questions received relating to water quality and health to DHEC.

C. In making its certification, DHEC shall use data from stream modeling and instream sampling. The DHEC statement of certification issuance or denial shall be submitted to the Commission and shall include a summary report of the methods used and findings developed to make the certification decision. DHEC shall, upon request, submit to the Commission copies of all data and documents considered in making the certification decision.

D. Conditions relating to water quality placed upon a DHEC certification shall be made a part of any transfer permit issued by the Commission.

E. DHEC shall provide a certification decision to the Commission within one hundred twenty days following receipt of a Class I Permit application. DHEC shall provide a certification decision to the Commission within thirty days following receipt of a Class II Permit Application. An extension of time may be granted for a Class I or Class II Permit Application upon written request by DHEC to the Commission.

121-12.9. Permit Application Review. [SC ADC 121-12.9]

A. In reviewing a permit application, the Commission shall consider information developed through studies, analyses, or inquiries undertaken by the Commission and information and comments submitted to the Commission by the applicant, public agencies, affected persons, and the public.

B. The following standards, factors and considerations will be reviewed by the Commission in making a determination on a permit application:

- (1) Protect the present, and consider projected stream uses of the losing river basin generally and of the losing river specifically, including but not limited to, present agricultural, municipal, industrial and instream uses, and assimilative needs;

- (2) Protect the water quality of the losing river basin;
- (3) Consider reasonably foreseeable future water needs of the losing river basin;
- (4) Consider the reasonably foreseeable future water needs of the applicant for the water to be transferred, including methods of water use, conservation, and efficiency of use;
- (5) Consider beneficial impact on the State and its local subdivisions of any proposed transfer, and the capability of the applicant to implement effectively its responsibilities under the requested permit;
- (6) Consider the nature of the applicant's use of the water, to determine whether the use is reasonable and beneficial;
- (7) Consider whether the proposed project shall promote and increase the storage and conservation of water;
- (8) Consider the feasibility of alternative sources of supply and their comparative costs;
- (9) Consider impact on interstate water use;
- (10) Consider requirements of other state or federal agencies with authority relating to water resources;
- (11) Consider availability of water in the losing river basin to respond to emergencies, including drought;
- (12) Consider whether the project shall have any beneficial or detrimental impact on navigation, hydropower generation, fish and wildlife habitat, aesthetics, or recreation;
- (13) Consider such other facts and circumstances as are reasonably necessary to carry out the purposes of this regulation.

121-12.10. Permit Action and Emergency Permits. [SC ADC 121-12.10]

A. Based upon review of all pertinent information the Commission may issue, deny or issue a permit with conditions.

B. When issuing a permit, the Commission may include conditions in the permit, including but not limited to the following:

- (1) The amount of water approved for transfer may be varied seasonally;
- (2) The transfer of water shall be required to cease or decrease when the instantaneous streamflow of the river basin of origin is equal to or less than a specified value determined by permit application review conducted pursuant to R.121-12.9;

(3) Special provisions in order to promote an adequate water supply for the state or to mitigate any future adverse conditions resulting from the transfer;

(4) Installation, maintenance and use of streamflow monitoring equipment;

(5) Establishment and reporting of transfer activities by the permittee.

C. No transfer of water may be permitted at any time which shall cause the remaining flow in the losing river basin to be less than the seven day, ten year low flow as established prior to the interbasin transfer without as a condition on the permit that the transfer of water shall be required to cease or decrease when the instantaneous streamflow of the river basin of origin is equal to or less than a specified value determined by permit application review conducted pursuant to R.121-12.9.

D. Upon the issuance by the Governor of a declaration or proclamation of an emergency relating to water resources, or the declaration by the Commissioner of DHEC that a public health emergency exists which warrants utilization of an alternate source of water, the Executive Director of the Commission may waive the usual permitting requirements and issue a temporary emergency transfer permit. Any such permit must be limited to meet the needs created by the emergency, and any such permit may be issued for a period no longer than six months or the duration of the Governor's declaration or proclamation, or public health emergency, whichever period is shorter.

121-12.11. Permit Duration, Renewal, and Transfer. [SC ADC 121-12.11]

A. In submitting a permit application under R.121-12.6, the applicant shall state a term of years for which a transfer permit is being requested. Except for good cause based upon information before the Commission during permit application review or as specified in (1) or (2) below, transfer permits will be issued for a term of twenty years:

(1) A permit applicant may request a permit for a term of less than twenty years;

(2) The Commission may issue a transfer permit for a period found to be reasonable based upon review of all relevant facts and circumstances pertaining to the proposed water transfer but for a period no longer than forty years.

B. A transfer permit may be renewed following a full review by the Commission of all past and current information relating to the transfer. An application for transfer permit renewal shall be filed by the applicant with the Commission a minimum of one year prior to permit expiration.

C. No transfer permit may be transferred from one person to any other person except upon review and approval by the Commission. In reviewing a request for a permit transfer, the Commission may review any of the provisions in R.121-12.9B.

121-12.12. Registered Transfers. [SC ADC 121-12.12]

A. Any person diverting or transferring or having substantially under construction facilities to divert or transfer five percent of the seven-day, ten-year low flow or one million gallons or more of water a day from one river basin and using or discharging all or any part of the water in a different river basin on or before December 1, 1984, may continue the transfer subject to the following conditions:

(1) The transfer must be registered with the Commission no later than November 13, 1985;

(2) The total amount of the transfer daily shall not exceed the larger of:

(a) the capacity of the facilities used to transfer water on December 1, 1984; or

(b) facilities to transfer water substantially under construction on December 1, 1984; or

(c) any water withdrawal project under contract approved by the Federal Energy Regulatory Commission prior to December 1, 1984.

B. Any person holding a transfer registration shall report to the Commission any substantial changes in either the registered amount of water transferred or the transfer facility ninety days prior to initiation. This reporting requirement does not include changes resulting from periodic maintenance, operational problems or other special cases not relevant to A above.

C. Each transfer registered under A above will be evaluated by the Commission to determine the amount of water and the term subject to registration. Any person submitting a request for registration under A above shall submit the necessary information to the Commission upon request to enable the Commission to make the appropriate determinations for registration. Any person complying with A above will be issued a tentative registration, pending the determinations required in this paragraph and issuance of a final registration:

(1) The amount of water subject to registration shall be determined in accordance with the standards in A(2) above.

(2) Based upon the evaluation required in C above, the term of registration shall be established as follows:

(a) Twenty years. A registration term of twenty years shall be deemed the ordinary minimum term of registration, unless exceptional circumstances are demonstrated or a determination under (b) or (c) below requires the establishment of a different term;

(b) A period found by the Commission to be reasonable based upon review of all relevant facts and circumstances pertaining to the water transfer but the period may not be longer than forty years;

(c) For transfers pursuant to A(2) above, a period determined to be the maximum useful life of the transfer facilities or water withdrawal project under contract not to exceed forty years from December 1, 1984.

(d) The cessation of a registered transfer for any reason for a continuous period of three years shall render the registration null and void.

D. Registration of a water transfer shall not be renewed following the conclusion of the registration term. Any person holding a water transfer registration may apply to the Commission for a permit for the transfer under registration. A permit application covering a registered transfer should be submitted to the Commission at least one year prior to the end of the registration term.

E. No person holding a transfer registration shall increase the amount of water transferred over the amount registered without first obtaining a permit from the Commission as specified in R.121-12.4.

121-12.13. Hearings. [SC ADC 121-12.13]

A. Any person actually aggrieved by the decision of the Commission to grant or deny a transfer permit may request a hearing before the Commission. With the exception of an applicant for a transfer permit, any person who has not submitted a written comment under 121-12.7 above, indicating how such person will be adversely affected by a water transfer in a manner or to a degree significantly different from the general public, is not an aggrieved party within the meaning of these rules.

B. Any hearing held under these rules will be conducted in accordance with the South Carolina Administrative Procedures Act.

121-12.14. Penalties. [SC ADC 121-12.14]

A. Any person violating any provision of Act 90 of 1985 is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars nor more than ten thousand dollars for each violation. In addition, if any person is adjudged to have committed a violation of Act 90 of 1985 willfully, the court may determine that each day during which the violation continued constitutes a separate offense.

B. Upon violation of any of the provisions of Act 90 of 1985 or the regulations of the Commission, the executive director may, either before or after the institution of criminal proceedings, institute a civil action in the circuit court in the name of the State for injunctive relief. Neither the institution of the actions nor any of the proceedings relating to them shall relieve any party to the proceedings from the penalty prescribed by Act 90 of 1985 for any violation of the provisions of the Act.